

## Message Text

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ORIGIN OPIC-06

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DRAFTED BY: OPIC/D:RPEATS/EABURTON

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L/E:SBOND

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----- 126005

R 102234Z JAN 75

FM SECSTATE WASHDC

TO AMEMBASSY TEHRAN

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E.O. 11652: NA

TAGS: IR, EINV

SUBJ: PROCEDURE FOR COI APPROVAL OF OPIC INSURANCE OF SERVICE  
CONTRACTS

REF: TEHRAN 2051 OF APR 10, 1972

1. SEVERAL US ENGINEERING, CONSTRUCTION AND OTHER SERVICE  
CONTRACTORS SEEK OPIC INSURANCE OF PROSPECTIVE CONTRACTS WITH GOI  
AGENCIES RANGING FROM 3 TO 7 YEAR TERMS ON MAJOR DEVELOPMENT  
PROJECTS. OPIC IS UNABLE TO ASSURE THEM THAT INSURANCE WILL BE AVAIL  
IF THEY WIN CONTRACT AWARDS. CONSEQUENTLY, FIRMS CANNOT SAFELY  
OMIT NON-COMMERCIAL RISKS IN CALCULATING CONTINGENCY FACTORS IN PRICE  
QUOTATIONS. INABILITY TO OFFER INSURANCE ALSO MAY BE REDUCING  
NUMBER OF US FIRMS WILLING TO COMPETE FOR GROWING PROJECT  
OPPORTUNITIES IN IRAN.

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2. OBSTACLES TO OPIC INSURANCE OF SUCH CONTRACTS IN IRAN ARE: (A) GOI INTERPRETATION OF BILATERAL INVESTMENT GUARANTY AGREEMENT AS APPLICABLE ONLY TO CONVENTIONAL PRIVATE INVESTMENT IN INDUSTRIAL PROJECTS, (TEHRAN 8215), AND (B) UNWILLINGNESS IN 1972 OF FONOFF LEGAL ADVISOR SEE REFTTEL TO ACT ON OPIC PROPOSAL THAT GOI PROJECT APPROVAL AS REQUIRED BY BILATERAL COULD AUTOMATICALLY BE ASSUMED BY OPIC IN THE CASE OF SERVICE CONTRACTS AWARDED TO UNITED STATES FIRMS TO WORK ON DEVELOPMENT PROJECTS OWNED BY GOI AGENCIES.

3. IN VIEW OF IRAN'S GROWING FOREIGN RESERVES, OPIC COVERAGE LIKELY TO BE CONCENTRATED INCREASINGLY ON TRANSACTIONS PROVIDING FOR CONTRIBUTIONS OF PRIVATE UNITED STATES TECHNOLOGY AND SERVICES TO DEVELOPING PROJECTS PARTIALLY OR WHOLLY FINANCED BY GOI, INCLUDING INFRASTRUCTURE AND OTHER SERVICE ACTIVITIES AS WELL AS INDUSTRIAL PROJECTS. RESTRICTIONS OF OPIC PROGRAM NOTED IN ABOVE PARA 2 MUST BE OVERCOME IF OPIC IS TO ASSIST UNITED STATES FIRMS IN COMPETING FOR THESE OPPORTUNITIES. BENEFITS TO IRAN OF THIS OPIC SERVICE ARE BROADER PARTICIPATION BY UNITED STATES HOLDER OF TECHNOLOGY AND LOWER BIDS.

4. ACTION REQUESTED: UNLESS EMBASSY PERCEIVES OBJECTION, REQUEST IT MAKE RENEWED EFFORT THROUGH EXCHANGE OF NOTES FOR REMOVAL OF OBSTACLES TO EFFECTIVE OPERATION OF OPIC PROGRAM OF SERVICE CONTRACT INSURANCE. DRAFT COVERING LETTER FROM AMB OR CHARGE TO FONOFF PRESENTING CASE FOR GOI AGREEMENT AND TEXT OF PROPOSED NOTE EXCHANGE FOLLOW IN PARAS 5 & 6, RESPECTIVELY. IT WOULD BE DESIRABLE FOR GOI TO HAVE HAD TIME TO STUDY THIS PROPOSAL BEFORE MEETING OF JOINT COMMITTEE ON ECONOMICS AND FINANCE IN FEBRUARY.

5. TEXT OF LETTER

EXCELLENCY: THE US GOVT INVESTMENT INCENTIVE PROGRAMS OF INSURANCE AND GUARANTIES ADMINISTERED BY THE OVERSEAS PRIVATE INVESTMENT CORP ("OPIC") HAVE INCLUDED SINCE 1972 AN EXPANDED INSURANCE PROGRAM FOR ENGINEERING, CONSTRUCTION AND OTHER SERVICE CONTRACTORS ENGAGED IN DEVELOPMENT PROJECT WORK FOR FOREIGN LIMITED OFFICIAL USE

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GOVTS. THE PURPOSES OF THIS PROGRAM ARE TO ENCOURAGE BROADER PARTICIPATION BY PRIVATE UNITED STATES FIRMS IN BIDDING ON PROJECTS IN DEVELOPING COUNTRIES AND TO ENABLE THESE FIRMS TO OMIT AN ALLOWANCE FOR NON-COMMERCIAL RISKS IN THEIR PRICE CALCULATIONS. BOTH OF THESE PURPOSES ARE CONSISTENT WITH THE MUTUAL OBJECTIVES

SERVED BY INTERNATIONAL DEVELOPMENT COOPERATION.

THE INVESTMENT GUARANTY AGREEMENT BETWEEN OUR TWO COUNTRIES, EFFECTED BY EXCHANGE OF NOTES ON SEPT 17 AND 21, 1957 AND AMENDED ON MAR 12, 1970, PROVIDES FOR OPERATION OF THE OPIC PROGRAM IN IRAN. PARA (2) OF THIS AGREEMENT PROVIDES THAT THE US GOVT WILL NOT ISSUE GUARANTIES OR INSURANCE IN CONNECTION WITH ANY PROJECT NOT APPROVED BY THE GOVT OF IRAN. YOUR GOVT HAS DESIGNATED THE CENTRAL BANK AND THE CENTRE FOR THE ATTRACTION AND PROTECTION OF FOREIGN INVESTMENT IN IRAN AS THE AGENCIES RESPONSIBLE FOR SUCH APPROVALS.

THESE AUTHORITIES, IN REVIEWING AND APPROVING FOR OPIC COVERAGE AN INVESTMENT PROJECT PROPOSED BY A US COMPANY, PRESUMABLY CONSIDER ITS GENERAL DESIRABILITY, ECONOMIC AND SOCIAL CONSEQUENCES, TERMS, ETC. THESE CONSIDERATIONS WILL ALREADY HAVE BEEN TAKEN INTO ACCOUNT WHEN THE PROJECT HAS BEEN INITIATED BY THE GOVT OF IRAN AND IS TO BE OWNED BY AN AGENCY OF YOUR GOVT, AND THE UNITED STATES PRIVATE PARTICIPATION TO BE INSURED BY OPIC IS SIMPLY AN ENGINEERING, CONSTRUCTION OR OTHER SERVICE CONTRACT. IN AWARDED SUCH A SERVICE CONTRACT, THE GOVT OF IRAN WILL HAVE DECIDED IN FAVOR OF THE PROJECT AND SET THE SPECIFICATIONS AND TERMS OF THE CONTRACT. IN SELECTING A PARTICULAR FOREIGN FIRM, THE GOVT OF IRAN WILL ALSO HAVE MADE A DETERMINATION THAT THE FIRM IS QUALIFIED AND RESPONSIBLE.

IF THE UNITED STATES BIDDERS ON SUCH CONTRACTS KNOW THAT THEY WILL BE ISSUED INSURANCE BY OPIC, THEY CAN OMIT ALLOWANCE IN THEIR BIDS FOR NON-COMMERCIAL RISK CONTINGENCIES. THIS ASSURANCE ALSO TENDS TO INCREASE THE NUMBER OF US FIRMS WILLING TO SEEK SUCH OVERSEAS CONTRACTS.

IN ORDER TO REALIZE THESE ADVANTAGES, IT IS NECESSARY THAT OPIC GIVE ASSURANCE IN ADVANCE THAT IF A UNITED STATES FIRM IS LIMITED OFFICIAL USE

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AWARDED A GOVT OF IRAN CONTRACT, OPIC INSURANCE WILL BE ISSUED TO THAT FIRM. OPIC CAN GIVE THIS ASSURANCE IF IT MAY ASSUME THAT THE PROJECT APPROVAL REQUIRED TO SATISFY PARA 2 OF THE AFOREMENTIONED AGREEMENT HAS ALREADY BEEN FULFILLED WHEN AN AGENCY OF YOUR GOVT INVITES FOREIGN BIDS AND ACCEPTS A US FIRM'S PROPOSAL ON A CONTRACT IN CONNECTION WITH A PROJECT OWNED BY THE GOVT OF IRAN.

THIS PROCEDURE IS SUGGESTED ONLY WITH RESPECT TO ENGINEERING, CONSTRUCTION AND OTHER SERVICE CONTRACTS WITH THE GOVT OF IRAN OR ITS AGENCIES. EXISTING APPROVAL PROCEDURES FOR OPIC INSURANCE OR GUARANTY OF ALL OTHER TYPES OF INVESTMENT IN ALL OTHER TYPES OF PROJECTS WOULD REMAIN UNCHANGED.

ATTACHED IS A DRAFT NOTE BY MEANS OF WHICH THE GOVT OF THE UNITED STATES WOULD PROPOSE TO FORMALIZE THE PROCEDURE DISCUSSED ABOVE. IF THE PROCEDURE IS ACCEPTABLE TO THE GOVT OF IRAN, DIPLOMATIC NOTES CAN BE SIGNED AND EXCHANGED TO FORMALIZE THE PROCEDURE.

ACCEPT, EXCELLENCY, ETC. (CLOSING)

6. DRAFT NOTE (IRAN) OPIC SERVICE CONTRACT SPECIAL FGA PROCEDURES

EXCELLENCY:

I HAVE THE HONOR TO REFER TO THE AGREEMENT EFFECTED BY EXCHANGE OF NOTES BETWEEN OUR TWO GOVTS ON SEPT 17 AND 21, 1957, AS SUPPLEMENTED BY EXCHANGE OF NOTES OF MAR 12, 1970, ON THE SUBJECT OF UNITED STATES GOVT INVESTMENT GUARANTIES. THESE ARE CURRENTLY ADMINISTERED BY THE OVERSEAS PRIVATE INVESTMENT CORP AND ARE NOW REFERRED TO AS INVESTMENT INSURANCE AND GUARANTIES, COVERING BOTH CONVENTIONAL INVESTMENTS AND SERVICE CONTRACTS.

THE GOVT OF THE UNITED STATES OF AMERICA PROPOSES THAT WHEN YOUR GOVT, OR AN AGENCY THEREOF, HAS ENTERED INTO A SERVICE CONTRACT WITH A PRIVATE UNITED STATES FIRM FOR ENGINEERING, CONSTRUCTION OR OTHER PROFESSIONAL SERVICES IN CONNECTION WITH A PROJECT SPONSORED BY YOUR GOVT, SUCH A CONTRACT SHALL BE CONSIDERED THE APPROVAL REQUIRED BY THE AFOREMENTIONED AGREEMENT. LIMITED OFFICIAL USE

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THE REGULAR HOST GOVT APPROVAL PROCEDURES ESTABLISHED BETWEEN OUR TWO GOVTS SHALL CONTINUE TO APPLY TO ALL OTHER TYPES OF PROJECTS TO BE THE SUBJECT OF GUARANTIES OR INSURANCE ISSUED BY THE OVERSEAS PRIVATE INVESTMENT CORP.

I WOULD APPRECIATE RECEIVING YOUR EXCELLENCY'S CONFIRMATION THAT THIS SPECIAL PROJECT APPROVAL PROCEDURE WITH RESPECT TO ENGINEERING, CONSTRUCTION OR OTHER PROFESSIONAL SERVICE CONTRACTS BETWEEN THE GOVT OF IRAN AND PRIVATE UNITED STATES FIRMS IS ACCEPTABLE TO THE GOVT OF IRAN.

ACCEPT, EXCELLENCY, ... (CLOSING)  
/S/USAMBASSADOR

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